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June 4, 1951
Op. No. 51-152

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ARIZONA ATTORNEY GENERAL

Mr. Robert Morrison
Pima County Attorney
Courthouse
Tucson, Arizona

Attention: W. T. Holmes, Civil Deputy
County Attorney

Dear Sir:

Before attempting to answer your inquiry of May 26 specifically, permit us to give a brief discussion of our interpretation of the legislation involved.

The portion of the Soldiers' and Sailors' Civil Relief Act with which we are concerned is found in 50 U.S.C.A., App., paragraph 574, which reads as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or

the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid. Oct. 17, 1940, c. 888, § 514, as added Oct. 6, 1942, c. 581, § 17, 56 Stat. 777, and amended July 3, 1944, c. 397, § 1, 58 Stat. 722."

With respect to personal property, this Act is in reality declaratory of the law as generally recognized before its passage. The following statements of law have been propounded by courts and textwriters on the subject:

1. Personal property may properly be assessed for taxation only in the state in which it has a situs. (51 Am. Jur. 462.)
2. The authority of the state in which tangible personalty is actually located to assess and collect property taxes on it is no longer open to question. (Old Dominion S.S. Co. v. Virginia, 193 U.S. 299, 40 L.ed 1059, 25 S.Ct. 686.)
3. Generally, chattels merely temporarily or transiently within the limits of a state are not subject to its property taxes. (110 ALR 723, et seq.)
4. The general rule of very extensive application is that the situs of intangibles for the purposes of property taxation is at the domicile of the owner. (59 ALR 1047.)

It is to be noted that the first five words of the subject statute are "For the purposes of taxation". The statute cannot be said to be a tax-exemption statute. In fact, the applicability of the statute to license, fee or excise is expressly made conditional on payment by the taxpayer of the license, fee or excise in his claimed state of residence or domicile. It in no wise exempts the serviceman from taxes. It is a declaration of the law governing power or jurisdiction to tax.

The condition set forth in the Act is "solely by reason of being absent therefrom in compliance with military or naval orders". Thus, if the serviceman is absent from a state solely by reason of compliance with military orders, he retains his domicile or residence in that state, and therefore that state retains power to tax his intangible personalty, income or gross income. Since the Act further provides that the state to which he is removed "solely by reason of compliance with military or naval orders" cannot deem tangible or intangible personalty to have acquired a situs in said state for purposes of taxation, the tax situs of all such property must remain in the state of residence or domicile.

The Act, thus, merely declares that a serviceman "absent by reason of military orders" is in fact "temporarily" in another state, and the law, as stated in proposition 3 above, applies. This would prevent the state to which he is removed from placing a "time limit" upon his stay, after which "time limit" the state would thereby prima facie acquire situs to tax his personalty. Therefore, during his entire stay in the new state, his state of residence or domicile retains power to tax his tangible and intangible personalty and his income, provided he is absent therefrom "solely by reason of compliance with military or naval orders".

Thus, we arrive at the real problem, the application and administration of the law. How can a county assessor, for example, determine whether the person is present within this state "solely by reason of compliance with military or naval orders?".

It would not be reasonable to say that any person present within the state, who possesses military or naval orders assigning him to a military or naval installation within the state and whose residence or domicile prior to the date of such orders was another state, is ipso facto still a resident of or domiciled in the other state. The orders assigning him to the installation in this state may have been issued at his express request and he may actually intend to live here permanently, his expressed statements to the contrary notwithstanding. Or, after arriving, he may have become so impressed with the state that he removes his family and all his worldly possessions here, buys real property and invests his savings in local business enterprises.

At the other extreme, no doubt many such military personnel are present within the state "solely by reason of compliance with military or naval orders". Good evidence of this would be: (1) payment of income taxes in claimed state of residence or domicile; (2) payment or assessment of taxes on tangible or intangible personalty in claimed state of residence or domicile; (3) payment of license, fee or exercise in claimed state of residence or domicile (as provided in the Act).

Between these two extremes, we have the very difficult problem of determining whether the person is here "solely by

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reason of compliance with military or naval orders" in the usual case where there is no evidence available to the assessor or taxing authority, other than the military orders and statements of the person involved.

The sovereign state of Arizona still has the power to investigate the facts of each case to determine taxability of property. If a person and his property are physically present within the state, the state prima facie has the power to tax that person or property, and the burden is on the taxpayer to show otherwise. See:

Savings & L. Soc. v. Multnomah County,
169 U.S. 421, 42 L. ed 803, citing

McCulloch v. Maryland, 4 Wheat. 316, 429;

and see:

Chicago, B. & O.R. Co. v. Babcock, 204
U.S. 525, 597, 51 L.ed 636, 640.

The Act does not force this state to accept a copy of the military orders and a statement by the serviceman as conclusive evidence that he is present within this state "solely by reason of compliance with military or naval orders." The facts can be determined as in any other tax case (and as they have many times been determined in cases involving the question of residence, domicile or property temporarily within the state) and if an improper determination is made, the taxpayer has his remedy as provided by law.

Your specific question to us reads:

"May the Assessor of Pima County, Arizona, assess taxes against the personal property of military personnel based in Pima County, Arizona, which military personnel are not residents of the State of Arizona, and secondly, may such military personnel who own automobiles be required to purchase Arizona license plates and pay the license fee as well as the tax thereon?"

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Under the premises contained in the question, it is our opinion that the answer to the first portion is "No". However, your use of the words "which military personnel are not residents of the State of Arizona" must mean that said personnel are absent from their domicile or residence "solely by reason of compliance with military or naval orders".

The answer to the second portion of your question is also "No", if based on the same premises as outlined in the paragraph above and with the additional provision, of course, as set forth in the statute, that the license, fee, or excise required by the state, territory, possession or District of Columbia, of which the person is a resident or in which he is domiciled, has been paid.

We trust that the foregoing may be of some assistance in clarifying the matter.

Very truly yours,

FRED O. WILSON
Attorney General

CHARLES C. STIDHAM
Assistant Attorney General

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